

## LEASE

This Lease is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "City", and NEBRASKA WESLEYAN UNIVERSITY, a Nebraska nonprofit corporation, hereinafter referred to as the "Lessee", for use of the following described public park property of the City for baseball games and practices sponsored by the Lessee.

WHEREAS, City is the owner of Southwest Portion of Lot Five (5), Section Thirty (30), Township Ten (10) North, Range Seven (7) East known as Woods Park in the City of Lincoln, Lancaster County, Nebraska, including a baseball facility located thereon (the "Facilities").

WHEREAS, the Lessee needs a baseball facility and is willing to assist the City in improving the baseball field in Woods Park to NCAA Division III Standards.

WHEREAS, the City will continue to maintain and schedule other user groups on this baseball facility when not being used by the Lessee.

WHEREAS, the City through its Parks and Recreation Department shall maintain ultimate use and control over Woods Park.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein set forth, the parties hereto agree as follows:

1. Term. The City hereby grants to the Lessee a lease for nonexclusive use of the Facilities for ten spring and fall seasons commencing at such time as the parties mutually agree that the renovated baseball field is playable, to end no later than December 31, 2014. The Lessee shall have exclusive use of the facilities during scheduled practices and games during Spring and Fall baseball seasons, generally late February through mid-May and mid-August through early October. Those scheduled practices and games are to be presented to the City on or before January 1 of each year.

2. Leasehold Improvements; Prepaid Rent and Maintenance. Lessee and the City will be making shared physical improvements to the existing Facilities. Generally, these physical improvements include re-grading, reshaping, laying sod, laying a warning track and agrilime in the infield and outfield, a new irrigation system, fencing, backstop, windscreen, safety cover, dugouts, bullpens, and sidewalks. Storage and bleacher facilities will be provided.

2.1 Cost Allocation. The costs and responsibilities allocated to each of the parties is set forth on Exhibit A attached hereto and incorporated herein. Lessee's obligations for the items set forth on Exhibit A are described as follows:

(i) Sprinkler system: Lessee will contract with a third party to install a sprinkler system, and shall be responsible for the cost thereof.

- (ii) Red Rock Aggregate: Lessee will provide this material, and the City will be responsible for labor. This material is presently at the site.
- (iii) Topsoil: Lessee will provide topsoil, and the Lessor will be responsible for removing the topsoil from the site identified by Lessee and to transport the topsoil to the Facility, and for all labor costs associated therewith.
- (iv) Drain piping: Lessee will reimburse Lessor for the cost of drain piping installed by Lessor in the amount indicated on Exhibit A.

The cost to Lessee of the above-described improvements of Sixty Thousand Dollars (\$60,000) shall be documented by Lessee and shall constitute prepaid rent for its use of the Facilities pursuant to this Lease. Lessor is responsible for all other improvements.

2.2 Woods Park Master Plan. Upon completion of all improvements contemplated by this Lease, the parties believe that the Facilities will fully comply with the existing Woods Park Master Plan. The parties acknowledge that future improvements may be proposed or necessary which are inconsistent with the Woods Park Master Plan (e.g., change of fencing, additional bleachers, etc.), and if inconsistent, such improvements will be subject to public review and approval by the Parks and Recreation Advisory Board. No future revisions of the Woods Park Master Plan will have the effect of substantially interfering with, or preventing, the fulfillment of the purposes of this Lease. For the purposes of this paragraph, repair or replacement of the Facilities with comparable items shall not be considered to be improvements subject to such public review or approval. Further, in any revision of such Master Plan, Lessor shall use reasonable efforts to include approval of a press box, concession stand and storage facility.

2.3 Occasional Use. The parties acknowledge that Lessee has only occasional use of the Facilities. Lessee shall have no other maintenance obligations other than as set forth herein and as may be generally expected of any party using City property pursuant to City rules and regulations referenced in Section 5 hereof.

2.4 Completion. Lessor shall make all reasonable efforts to complete its improvements such that the Facilities will be ready for use by Lessee on March 1, 2003 for the collegiate 2003 baseball season. If not available, Lessor shall provide other comparable facilities to Lessee at no charge with priority scheduling of such other facility until completion of the Facilities.

3. Effect of NCAA (III) Standards. The Facilities will be improved to standards consistent with those required by membership in the National Collegiate Athletic Association Division III, the terms of which are attached hereto as Exhibit B and incorporated herein. If those standards require additional on-site improvements during the life of this Lease, and subject to the provisions of section 2.2 above, the parties agree to make them and to divide the cost pro rata based on time of use of the Facilities; provided, however, that no contract will be entered into which obligates a party to pay more than \$5,000 in any calendar year under this provision without that party's prior written consent. The City shall maintain the Facilities, including watering, mowing, care

of the field of play, etc., to provide a quality facility as part of the City Park system. The parties intend that the Facilities will continue to comply with NCAA (III) standards.

4. Lessee's Right to Priority Use. The City shall coordinate and schedule events sponsored by other organizations. Lessee shall submit its practice and game schedule to the City on or before January 1 of each year of this Lease. Scheduling shall be so conducted as to promote to a maximum extent the public use and enjoyment of the Facilities subject, however, to Lessee's priority use during the months of February, March, April and May, and during Lessee's Fall schedule from mid-August of each year through the first full week of October of each year during the Lease term. Conflicts over scheduling, and any necessary rescheduling caused by unfavorable weather conditions, shall be resolved in favor of Lessee during the months of its priority use. All other scheduling conflicts shall be submitted to the Director of Parks and Recreation for resolution.

5. City Rules and Regulations. Rules and regulations for use of the Facilities shall be promulgated by the City through the Director of Parks and Recreation. Lessee may suggest additional rules and regulations subject to the approval of the Director of Parks and Recreation. All rules and regulations for use of the Facilities shall be approved by the Mayor and placed on file in the City Clerk's Office.

6. Additional Leasehold Improvements. Lessee may make minor changes to the field of play (i.e., changes in the pitcher's mound or warning track) and other improvements (i.e., bleacher repair) which it deems to be necessary for purposes of maintenance or safety. Any other changes, and any future improvements to the Facilities, shall be subject to prior written approval by the Director of Parks and Recreation. Such improvements shall become a part of the Facilities and shall be and remain the property of the City at all times during and after the term of this Lease unless the Lease is terminated before ten full Spring and Fall seasons of use, or December 31, 2014, whichever is earlier. If this Lease terminates before the specified term, Lessee shall have the right to remove its improvements, provided it returns the premises to the same condition they were in at the beginning of the Lease term, normal wear and tear excepted. Neither party shall install athletic field lighting as an improvement to the Facilities during the term of this Lease.

7. Concessions; Permits; Use of Facility. The City may grant concession licenses to individuals to occupy or remain upon the subject premises according to Lincoln Municipal Code § 12.08.320; subject, however to Lessee's right to operate or outsource the concessions during the months of its priority use, in every year on the same terms as the City has licensed third parties. If Lessee waives its right to operate or outsource the concessions, then the City may grant the license to any third parties. The City shall notify Lessee of any licenses granted to third parties. The City may reserve to itself a percentage of revenue from the concessions operated by Lessee or its outsource operator, equivalent to the percentage it reserves from other operators. Agreements with concessionaires shall include an obligation of such operator for trash pickup, and Lessee shall use reasonable efforts to pick up trash in the area after using the Facilities.

7.1 Ticket Sales. The Lessee shall have the right to sell tickets to post-season events held in the Facilities and to broadcast its events, using a broadcaster of its own choosing.

7.2 Parking. Lessee will encourage its patrons and users of the Facilities to park in the Woods Park parking lots on J Street and 33<sup>rd</sup> Street, and not on the street.

7.3 Sound. Lessee may use a portable public address system with speakers behind the bleachers pointed to the northeast for all games, and it may play music only between innings. Lessee acknowledges that it will be subject to City noise regulations.

8. Indemnification and Insurance. The Lessee shall indemnify and save harmless the City from claims and demands of every nature and description arising out of the use or maintenance of said premises by the Lessee, its agents, employees and volunteers, and the Lessee agrees that it shall have no rights nor privileges under or by virtue of any of the terms of this Lease unless and until it shall file with the City and keep in full force and effect during the entire period of this Lease, a certificate of liability insurance issued by an insurance company authorized to do business in the State of Nebraska, providing liability coverage protecting both the City and the Lessee from all liability arising out of all operations of the Lessee, its agents and employees, hereunder. Such insurance coverage shall be in the minimum amounts of \$2,000,000.00 for the injury or death of any number of persons per occurrence, and \$2,000,000.00 for property damage per occurrence; and such insurance shall provide that it cannot be canceled prior to the end of the period of this Lease except upon thirty (30) days written notice to the City. Such insurance shall be subject to the approval of the City Attorney.

9. No Assignment. This Lease cannot be assigned or sublet.

10. Default Termination. In the event of failure of the Lessee to fully comply with all the terms and conditions hereof, City may give Lessee written notice of its intent to terminate the Lease within ninety (90) days of the notice unless Lessee cures the default in the interim, or can demonstrate substantial good faith progress toward cure with a full cure reasonably expected within sixty (60) days after the end of the initial ninety (90) day notice and cure period.

11. No Default Termination. The Lease may be terminated by the City or Lessee at any time upon the giving of thirty-six (36) months prior written notice. Notice to the City shall be sent to the Director of Parks and Recreation.

12. Rights of City; Public Use of Facility. The City hereby reserves in its proper officers the power to supervise and control the use of the Facilities for the benefit of the public, except that while the Lessee is using the Facilities for the purposes of conducting its sponsored baseball games, practices and other events, the Lessee shall be given exclusive control, subject to reasonable rules, regulations, and ordinances of the City for that purpose. This Lease shall not be construed to prevent the City from using the Facilities for public purposes when such use does not interfere with or hinder that of the Lessee at such times as events scheduled by the Lessee on its behalf or on behalf of other organizations are not actually in progress. It is understood and agreed that the City does not intend to surrender jurisdiction of its park property described in this Lease and that such property will continue to be used for the benefit of the public.

13. Licenses. The Lessee, its agents and employees, and affiliated organizations

which Lessee allows to use the Facilities shall procure and pay for all necessary permits as required by law to conduct its operations at the Facilities, including copyright, performance and such other intellectual property licenses as may be needed.

14. Non-Discrimination. Lessee shall not discriminate against any person because of race, color, sex, creed, religion, ancestry, national origin, age, marital status or disability, to fail or refuse to hire, or discharge, an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any other term or condition of employment pursuant to the requirements the Lincoln Municipal Code Chapter 11.08 and *Neb. Rev. Stat.* § 48-1122 (Reissue 1998 as amended).

15. Operating Standards. The Lessee shall comply with all ordinances and rules and regulations of the City with respect to the use and enjoyment of the Facilities, including the erection of any structure thereon. The Lessee shall be responsible for assuring that the Facilities fully comply with the requirements of the Americans with Disabilities Act during all periods in which it, its agents or invitees are using the Facilities and shall indemnify and hold harmless the City from all costs, claims and damages arising out of or in connection with any suit brought under the ADA for periods during which Lessee is in possession of the Facilities.

16. Authorized Persons. The following officers, employees, or agents of the parties shall have the authority to make decisions affecting the ordinary operation of the Facilities: The Lessee's Chief Financial Officer, or his or her designee and The Director of the Department of Parks and Recreation of the City of Lincoln. The following officers shall have the power to amend the Lease subject to review and approval by the Lincoln City Council: Lessee's President, or his or her designee and the Mayor of the City of Lincoln, Nebraska.

17. Notice. All communications, demands, notices, or objections permitted or required to be given or served under this Lease shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its duly authorized agent or if deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, or if telegraphed, by prepaid telegram, and addressed to the other party to this Lease, to the address set forth next to that party's signature at the end of this Lease, or if to a person not a party to this Lease, to the address designated by a party to this Lease in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the tenth (10th) day after the giving of notice, the newly designated address shall be that party's address for the purpose of all communications, demands, notices, or objections permitted or required to be given or served under this Lease.

18. Relationship of the Parties. Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the City and the Lessee, it being understood that the sole relationship created hereby is one of landlord and tenant.

19. Eminent Domain. If the Facilities are completely taken by any public authority

superior to the City under the power or threat of eminent domain, then the term of this Lease shall cease as of the day possession shall be taken, and the City shall make a pro rata refund of the prepaid rent. In the event that less than the Facilities are taken so that they can still be used by Lessee, then this Lease shall terminate only at the option of the Lessee. In that case, there shall be no reduction in rent, and all other terms and provisions of this Lease shall remain in effect. All damages awarded for the taking shall belong to and be the property of the City irrespective of the basis on which they are awarded.

20. Permitted Uses. Throughout the term of this Lease, both parties for their respective uses and events shall occupy and use the Facilities primarily for conducting baseball/sporting events for spectators to watch. The use of the Facilities may include secondary uses sponsored by either party for conducting events, exhibitions, and other similar functions and for purposes related and incidental thereto as may be permitted under applicable rules and regulations of the Department of Parks and Recreation, but only if the sponsor party promptly returns the Facilities to the condition prior to the secondary use. The scope of such secondary uses shall not include events that result in an audience that is intended to exceed the estimated bleacher capacity of the Facilities. Any secondary uses shall be conducted so as not to interfere with or substantially impair the continued use of the Facilities for baseball.

21. Naming, Advertising Standards. For the duration of this Lease, the field will be named "Nebraska Wesleyan University Field" within the Kiwanis Baseball Facility. Lessor shall install all signage, including appropriate signage containing the name of the field and the Facilities. Lessee may install a plaque recognizing the contribution of Osborne Nickerson to the original University playing field on the backstop with the exact wording to be provided by Lessee. The entire outfield fence area and backstop shall be made available to Lessee to recognize its donors, sponsors and others, provided that such signage shall be temporary in nature and removable. Lessor shall have no obligation to protect such signage. Lessee shall remove its signage at the end of each day's use. Lessee agrees to adhere to standards consistent with its mission and image and with the Facilities' character as a public, family oriented event center.

22. Entire Agreement. This Lease and the Exhibits attached hereto constitute the entire agreement of the parties and may not be amended or modified without the express written consent of both parties. This Lease supersedes all other agreements or understandings between the parties regarding the subject matter hereof, specifically including the Letter of Understanding dated February 28, 2002.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

ATTEST:

CITY OF LINCOLN, NEBRASKA  
a municipal corporation  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Don Wesely, Mayor

The Lessee hereby agrees to accept this Lease and to be bound by all the terms and conditions hereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

ATTEST:

NEBRASKA WESLEYAN UNIVERSITY  
a Nebraska nonprofit corporation  
5000 St. Paul Avenue  
Lincoln, NE 68504

\_\_\_\_\_  
Athletic Director

\_\_\_\_\_  
President

STATE OF NEBRASKA     )  
                                      ) SS.  
COUNTY OF LANCASTER )

On \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public, personally came Don Wesely, to me known to be the Mayor of the City of Lincoln, Nebraska, a municipal corporation, and the identical person whose name is affixed to the foregoing instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said City.

Witness my hand and notarial seal the day and year last above written.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
                                      ) SS.  
COUNTY OF LANCASTER )

On \_\_\_\_\_, 2002, before me, the undersigned, a Notary Public, personally came Jeannie Watson, to me known to be the President of Nebraska Wesleyan University, a Nebraska nonprofit corporation, and the identical person whose name is affixed to the foregoing instrument and acknowledged the same to be her voluntary act and deed and the voluntary act and deed of said University.

Witness my hand and notarial seal the day and year last above written.

\_\_\_\_\_  
Notary Public

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October 9, 2002  
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